

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INGINIO HERNANDEZ,

Plaintiff,

vs.

RENE BAKER, et al.

Defendants.

3:13-cv-00083-MMD-WGC

ORDER

re: Doc. # 98

Before the court is Plaintiff's "Motion to Reply and Answer to Defendants as Opposition to Plaintiff's Motion (#93) for Verification of Civil Right Complaint Pursuant to 42 U.S.C. § 1983 and Hereby Declare and State as Follows Upon A Plaintiff Response." (Doc. # 98.)¹ No response has been filed by Defendants.

As with several of Plaintiff's prior filings, the court has difficulty discerning what relief Plaintiff is seeking by this motion. The District Court Clerk's Office, when docketing Plaintiff's motion, characterized it as a request by Plaintiff for this court to reconsider its order (Doc. # 96), at least as it pertained to the court's resolution of his motion lodged as Doc. # 93. The court is not necessarily convinced that is an accurate characterization of Plaintiff's motion. However, to the extent Plaintiff's motion is a request for the court's reconsideration of the court's order, the court is not inclined to alter its decision.

The Federal Rules of Civil Procedure do not contain a provision governing the review of interlocutory orders. However, the Ninth Circuit Court of Appeals has ruled that "As long as a district

¹ Refers to court's docket number.

1 court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider,
2 rescind, or modify an interlocutory order for cause seen by it to be sufficient.” *City of Los Angeles,*
3 *Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (internal quotation marks
4 and citation omitted) (emphasis omitted). This inherent power is grounded “in the common law and it
5 not abridged by the Federal Rules of Civil Procedure.” *Id.*, at 887.

6 While other districts in the Ninth Circuit have adopted local rules governing reconsideration of
7 interlocutory orders, the District of Nevada has not. Rather, this district has used the standard for a
8 motion to alter or amend judgment under Rule 59(e). *See, e.g., Henry v. Rizzolo*, No. 2:08-cv-00635-
9 PMP-GWF, 2010 WL 3636278 at *1 (D.Nev. Sept. 10, 2010) (quoting *Evans v. Inmate Calling*
10 *Solutions*, No. 3:08-cv-00353-RCJ-VPC, 2010 WL 1727841, at *1-2 (D. Nev. 2010)). “A motion for
11 reconsideration must set forth the following: (1) some valid reason why the court should revisit its prior
12 order, and (2) facts or law of a ‘strongly convincing nature’ in support of reversing the prior decision.”
13 *Rizzolo*, 2010 WL 3636278 at *1 (citing *Frasure v. U.S.*, 256 F.Supp.2d 1180, 1183 (D.Nev. 2003)).
14 Moreover, “[r]econsideration is appropriate if the district court (1) is presented with newly discovered
15 evidence, (3) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
16 intervening change in controlling law.” *Id.* (quoting *United States Aviation Underwriters v. WesAir,*
17 *LLC*, No. 2:08-cv-00891-PMP-LRL, 2010 WL 1462707, at *2 (D.Nev. 2010) (internal citation omitted),

18 If the court were to interpret Plaintiff's motion as a request for reconsideration, Plaintiff's motion
19 fails. He provides no basis that there are any facts or law which suggest the prior decision should be
20 reversed. There is no newly discovered evidence, the decision was neither manifestly unjust nor
21 constituted clear error, nor has there been any intervening change in the law.

22 Second, to the extent Plaintiff's filing might be interpreted as an objection of sorts to Defendants'
23 answer (Doc. # 31) to Plaintiff's amended complaint (Doc. # 11), the court denies Plaintiff's motion for
24 the same reason the court denied the earlier motion (Doc. # 54) seeking leave to reply to Defendants'
25 answer. (Doc. # 96 at 1, re Doc. # 54.) A reply to an answer is only permitted by court order. Fed. R.
26 Civ. P. 7(a)(7).


27 Third, to the extent Plaintiff's motion might be interpreted as a request to amend the deadlines
28 contained in the scheduling order (Doc. # 96 at 9-10), the Plaintiff presents no explanation as to what

1 deadlines should be extended or what date(s) he proposes for the objectionable deadlines. The initial
2 scheduling order allowing discovery to proceed was entered on December 26, 2013. (Doc. # 33.) Those
3 deadlines were extended in this court's Order of September 15, 2014. (Doc. # 96.) There is no cogent
4 reason to again extend any of the deadlines contained in the scheduling order.²

5 And last, the court perceives Plaintiff's motion as a premature attempt to argue the merits of his
6 claims or seek this court to order witnesses from a local hospital to testify in his case. (Doc. # 98 at 4.)
7 Plaintiff makes the quantum leap from there, suggesting the court should conclude Plaintiff's rights under
8 the Constitution were "violated" (*id.* at 5) and that therefore this court should "enter in judgment 'and'
9 granting a plaintiff (sic) motion (#93)" As discussed above, the relief Plaintiff seemingly sought in his
10 filing lodged as Doc. # 93 was rejected in this court's Order. (Doc. # 96.). Plaintiff's apparent attempt
11 to allow Plaintiff to file a reply to Defendants' answer is **DENIED**. If Plaintiff is seeking summary
12 judgment, he should file the appropriate motion, identify the material facts which are not at issue,
13 specifically identify against whom he seeks judgment to be entered and provide the legal and factual
14 rationale for a motion for summary judgment under Fed. R. Civ. P. 54. Filing a "Motion to Reply and
15 Answer to Defendants as Opposition to Plaintiff's Motion (#93) for Verification of Civil Right
16 Complaint Pursuant to 42 U.S.C. § 1983 and Hereby Declare and State as Follows Upon A Plaintiff
17 Response" (Doc. # 98) cannot in any stretch of the imagination be considered a valid motion for
18 summary judgment. The court in its discretion declines to treat it as such.

19 IT IS SO ORDERED.

20 DATED: November 14, 2014.

21 
22 WILLIAM G. COBB
23 UNITED STATES MAGISTRATE JUDGE
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26

27 _____
28 ² The court, however, will discuss these issues and deadlines further when addressing them in response to Plaintiff's
motion for enlargement of time, Doc. # 102.